

ORIGINAL
FILED

JULY 18 PM 1:45

COPY
U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

BORNSTEIN & BORNSTEIN
Jonathan Herschel Bornstein (SBN 163392)
2590 Geary Boulevard
San Francisco, CA 94115-3318
Telephone: (415) 409-7611
Facsimile: (415) 409-9345

DANZIGER SHAPIRO & LEAVITT, PC
Douglas M. Leavitt
150 S. Independence Mall West, Suite 1050
Sixth and Chestnut Streets
Philadelphia, PA 19106
Telephone: (215) 545-4830
Facsimile: (215) 545-6710

E-filing

Attorneys for Plaintiff

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
- SAN FRANCISCO DIVISION -

DAVID EISENBERG, Derivatively on Behalf of)
Nominal Defendant LINEAR TECHNOLOGY)
CORPORATION,)

Plaintiff,)

v.)

PAUL COGHLAN, CLIVE B. DAVIES, ROBERT)
C. DOBKIN, DAVID S. LEE, LOTHAR MAIER,)
LEO T. MCCARTHY, RICHARD M. MOLEY,)
ROBERT H. SWANSON, JR., and THOMAS S.)
VOLPE,)

Defendants,)

and)

LINEAR TECHNOLOGY CORPORATION,)

Nominal Defendant.)

Case Number: MMC

**SHAREHOLDER DERIVATIVE
COMPLAINT.**

JURY TRIAL DEMANDED

1 Plaintiff, by his attorneys, submits this Derivative Complaint (the “Complaint”) against the
2 defendants named herein.
3
4

5 **NATURE AND SUMMARY OF THE ACTION**

6 1. This is a shareholder’s derivative action brought for the benefit of nominal defendant
7 Linear Technology Corporation (“Linear” or the “Company”) against the members of its Board of
8 Directors (the “Board”) and certain of its executive officers seeking to remedy defendants’ breaches of
9 fiduciary duties, unjust enrichment, statutory violations, and other violations of law.
10

11 2. In gross breach of their fiduciary duties as officers and/or directors of Linear, the
12 Individual Defendants (as defined herein) colluded with one another to:

- 13 a. improperly backdate dozens of grants of Linear stock options to
14 Linear Chairman and former Chief Executive Officer Robert
15 Swanson and several other Linear executives, in violation of the
16 Company’s shareholder-approved stock option plans;
- 17 b. improperly record and account for the backdated stock options, in
18 violation of Generally Accepted Accounting Principles;
- 19 c. improperly take tax deductions based on the backdated stock
20 options, in violation of Section 162(m) of the Tax Code;
- 21 d. produce and disseminate to Linear shareholders and the market
22 false financial statements and other SEC filings that improperly
23 recorded and accounted for the backdated option grants and
24 concealed the improper backdating of stock options.

25 3. As a result of the Individual Defendants’ egregious misconduct, Linear has sustained
26 millions of dollars in damages, and Swanson and the other recipients of the backdated stock options
27 have garnered millions of dollars in unlawful profits.
28
29

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28
- 29
- 30
- 31
- 32
- 33
- 34
- 35
- 36
- 37
- 38
- 39
- 40
- 41
- 42
- 43
- 44
- 45
- 46
- 47
- 48
- 49
- 50
- 51
- 52
- 53
- 54
- 55
- 56
- 57
- 58
- 59
- 60
- 61
- 62
- 63
- 64
- 65
- 66
- 67
- 68
- 69
- 70
- 71
- 72
- 73
- 74
- 75
- 76
- 77
- 78
- 79
- 80
- 81
- 82
- 83
- 84
- 85
- 86
- 87
- 88
- 89
- 90
- 91
- 92
- 93
- 94
- 95
- 96
- 97
- 98
- 99
- 100

5. Venue is proper in this district because a substantial portion of the transactions and wrongs complained of herein, including the defendants' primary participation in the wrongful acts detailed herein, occurred in this district. One or more of the defendants either resides in or maintains executive offices in this district, and defendants have received substantial compensation in this district by engaging in numerous activities and conducting business here, which had an effect in this district.

6. Plaintiff David Eisenberg, a citizen of the State of New York, is, and was at all relevant times, a shareholder of nominal defendant Linear.

8. Defendant Robert H. Swanson, Jr. (“Swanson”), a founder of the Company, has served as Executive Chairman of the Board since January 2005. Swanson previously served as President, Chief Executive Officer, and a director of Linear from 1981 to April 1999, and as Chairman of the Board and

1 Chief Executive Officer of the Company from April 1999 to January 2005. Upon information and
2 belief, Swanson is a citizen of the State of California.

3
4 9. Defendant Lothar Maier (“Maier”) has served as a director of Linear and as Chief
5 Executive Officer of the Company since January 2005. Maier previously served as Chief Operating
6 Officer of the Company from 2000 to January 2005. Upon information and belief, Maier is a citizen of
7 the State of California

8
9 10. Defendant Paul Coghlan (“Coghlan”) has served as Vice President of Finance and Chief
10 Financial Officer of Linear at all times relevant hereto. Upon information and belief, Coughlin is a
11 citizen of the State of California.

12
13 11. Defendant Clive B. Davies (“Davies”) served as Vice President and Chief Operating
14 Officer of Linear from 1995 to 1999 and as President of Linear from 1999 to 2003. Upon information
15 and belief, Davies is a citizen of the State of California.

16
17 12. Defendant Robert C. Dobkin (“Dobkin”) served as Vice President of Engineering of
18 Linear at all times relevant hereto. Upon information and belief, Dobkin is a citizen of the State of
19 California.

20
21 13. Collectively, defendants Swanson, Maier, Coghlan, Davies, and Dobkin are referred to
22 herein as the “Officer Defendants.”

23
24 14. Defendant David S. Lee (“Lee”) has served as a director of Linear and as a member of
25 both the Compensation Committee of the Board (the “Compensation Committee”) and the Audit
26 Committee of the Board (the “Audit Committee”) at all times relevant hereto. Upon information and
27 belief, Lee is a citizen of the State of California.

1 15. Defendant Leo T. McCarthy (“McCarthy”) has served as a director of Linear and as a
2 member of both the Compensation Committee and the Audit Committee at all times relevant hereto.
3 Upon information and belief, McCarthy is a citizen of the State of California.
4

5 16. Defendant Richard M. Moley (“Moley”) has served as a director of Linear and as a
6 member of both the Compensation Committee and the Audit Committee at all times relevant hereto.
7 Upon information and belief, Moley is a citizen of the State of California.
8

9 17. Defendant Thomas S. Volpe (“Volpe”) has served as a director of Linear and as a
10 member of both the Compensation Committee and the Audit Committee at all times relevant hereto.
11 Upon information and belief, Volpe is a citizen of the State of California.
12

13 18. Collectively, defendants Lee, McCarthy, Moley, and Volpe are referred to herein as the
14 “Committee Defendants.”
15

16 19. Collectively, the Officer Defendants and Committee Defendants are referred to herein as
17 the “Individual Defendants.”
18

19 **DUTIES OF THE INDIVIDUAL DEFENDANTS**

20 20. By reason of their positions as officers and/or directors of the Company and because of
21 their ability to control the business and corporate affairs of the Company, the Individual Defendants
22 owed the Company and its shareholders the fiduciary obligations of good faith, trust, loyalty, and due
23 care, and were and are required to use their utmost ability to control and manage the Company in a fair,
24 just, honest, and equitable manner. The Individual Defendants were and are required to act in
25 furtherance of the best interests of the Company and its shareholders so as to benefit all shareholders
26 equally and not in furtherance of their personal interest or benefit. Each director and officer of the
27 Company owes to the Company and its shareholders the fiduciary duty to exercise good faith and
28
29

1 diligence in the administration of the affairs of the Company and in the use and preservation of its
2 property and assets, and the highest obligations of fair dealing.

3
4 21. The Individual Defendants, because of their positions of control and authority as
5 directors and/or officers of the Company, were able to and did, directly and/or indirectly, exercise
6 control over the wrongful acts complained of herein.

7
8 22. To discharge their duties, the officers and directors of the Company were required to
9 exercise reasonable and prudent supervision over the management, policies, practices and controls of the
10 Company. By virtue of such duties, the officers and directors of the Company were required to, among
11 other things:

- 12
13 a. exercise good faith in ensuring that the affairs of the Company were
14 conducted in an efficient, business-like manner so as to make it
15 possible to provide the highest quality performance of their business;
 - 16 b. exercise good faith in ensuring that the Company was operated in a
17 diligent, honest and prudent manner and complied with all applicable
18 federal and state laws, rules, regulations and requirements, including
acting only within the scope of its legal authority;
 - 19 c. exercise good faith in supervising the preparation, filing and/or
20 dissemination of financial statements, press releases, audits, reports or
21 other information required by law, and in examining and evaluating
22 any reports or examinations, audits, or other financial information
concerning the financial condition of the Company; and
 - 23 d. exercise good faith in ensuring that the Company's financial
24 statements were prepared in accordance with Generally Accepted
Accounting Principles ("GAAP"); and
 - 25 e. refrain from unduly benefiting themselves and other Company insiders
26 at the expense of the Company.
- 27
28
29

1 23. The Individual Defendants were responsible for maintaining and establishing adequate
2 internal accounting controls for the Company and to ensure that the Company's financial statements
3 were based on accurate financial information. According to GAAP, to accomplish the objectives of
4 accurately recording, processing, summarizing, and reporting financial data, a corporation must
5 establish an internal accounting control structure. Among other things, the Individual Defendants were
6 required to:

7 (1) make and keep books, records, and accounts, which, in reasonable
8 detail, accurately and fairly reflect the transactions and dispositions of
9 the assets of the issuer; and

10 (2) devise and maintain a system of internal accounting controls sufficient
11 to provide reasonable assurances that –

12 (a) transactions are executed in accordance with management's
13 general or specific authorization;

14 (b) transactions are recorded as necessary to permit preparation of
15 financial statements in conformity with [GAAP].

16 24. Linear's Audit Committee Charter provides that the Audit Committee shall be
17 responsible for, among other things,
18
19

20 a. Reviewing the results of the quarterly review and the committee, or its
21 chairman, shall review the interim financial statements prior to the filing
22 of the Company's quarterly report on Form 10-Q;

23 b. Reviewing with management and the independent auditors the financial
24 statements to be included in the Company's Annual Report on Form 10-K;
and

25 c. Overseeing the adequacy of the corporation's system of internal
26 accounting controls, including obtaining from the independent auditors
27 their management letters or summaries on such internal accounting
controls.
28
29

FACTUAL ALLEGATIONS

Stock Option Grants to the Officer Defendants

25. At all times relevant hereto the Compensation Committee determined the salaries and incentive compensation for executive officers of Linear and administered the Company's stock option plans.

26. From 1995 to 2002, the Compensation Committee granted certain Linear stock options to the Officer Defendants, as follows:¹

<u>Officer</u>	<u>Purported Date of Grant</u>	<u>Exercise Price</u>	<u>Number of Options</u>
Swanson	7/25/95	\$34.125	200,000
	7/23/96	\$24.75	200,000
	1/12/98	\$51.875	125,000
	4/13/99	\$56.3125	100,000
	7/28/00	\$50.25	200,000
	4/17/01	\$38.25	500,000
	7/26/02	\$25.05	381,400
Coghlan	7/25/95	\$34.125	70,000
	7/23/96	\$24.75	70,000
	1/12/98	\$51.875	45,000
	4/13/99	\$56.3125	35,000
	7/28/00	\$50.25	70,000
	4/17/01	\$38.25	75,000
	7/26/02	\$25.05	146,690
Maier	7/28/00	\$50.25	45,000
	4/17/01	\$38.25	30,000
	7/26/02	\$25.05	100,060

¹ Exercise prices and numbers of options are not adjusted for the Company's 2-for-1 stock splits effective September 1, 1995, February 22, 1999, and March 28, 2000.

1	Davies	7/25/95	\$34.125	100,000
2		7/23/96	\$24.75	100,000
3		1/12/98	\$51.875	65,000
4		4/13/99	\$56.3125	65,000
5		7/28/00	\$50.25	120,000
6		4/17/01	\$38.25	75,000
7		7/26/02	\$25.05	186,200
8	Dobkin	7/25/95	\$34.125	150,000
9		7/23/96	\$24.75	150,000
10		1/12/98	\$51.875	95,000
11		4/13/99	\$56.3125	45,000
12		7/28/00	\$50.25	75,000
13		4/17/01	\$38.25	70,000

14 27. Pursuant to the terms of the Company's shareholder-approved stock option plans, the
15 exercise price of options must be no less than the closing bid price of Linear stock on the last trading
16 day before the day of grant.

17 28. Pursuant to APB 25, the applicable GAAP provision at the time of the foregoing stock
18 option grants, if the market price on the date of grant exceeds the exercise price of the options, the
19 company must recognize the difference as an expense.

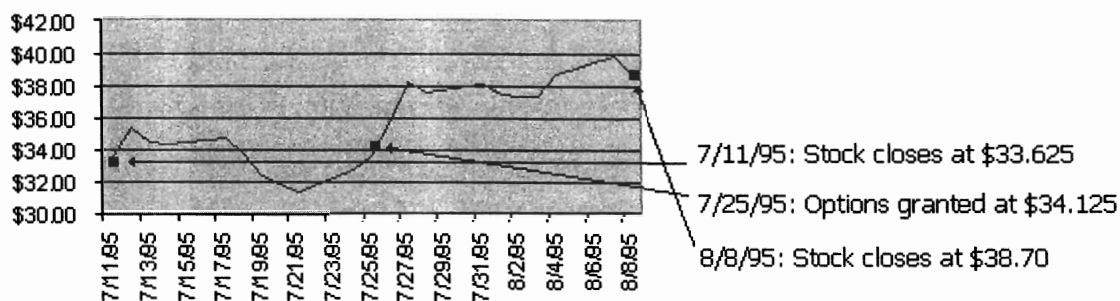
20 29. Pursuant to Section 162(m) of the Tax Code, 26 U.S.C. § 162(m) ("Section 162(m)"),
21 compensation in excess of \$1 million per year, including gains on stock options, paid to a corporation's
22 five most highly-compensated officers is tax deductible only if: (i) the compensation is payable solely
23 on account of the attainment of one or more performance goals; (ii) the performance goals are
24 determined by a compensation committee comprised solely of two or more outside directors, (iii) the
25 material terms under which the compensation is to be paid, including the performance goals, are
26 disclosed to shareholders and approved by a majority of the vote in a separate shareholder vote before
27 the payment of the compensation, and (iv) before any payment of such compensation, the compensation
28 committee certifies that the performance goals and any other material terms were in fact satisfied.
29

30. In a striking pattern that could not have been the result of chance, each and every one of the foregoing stock option grants was dated just after a sharp drop and just before a substantial rise in Linear's stock price, as demonstrated in the following charts:

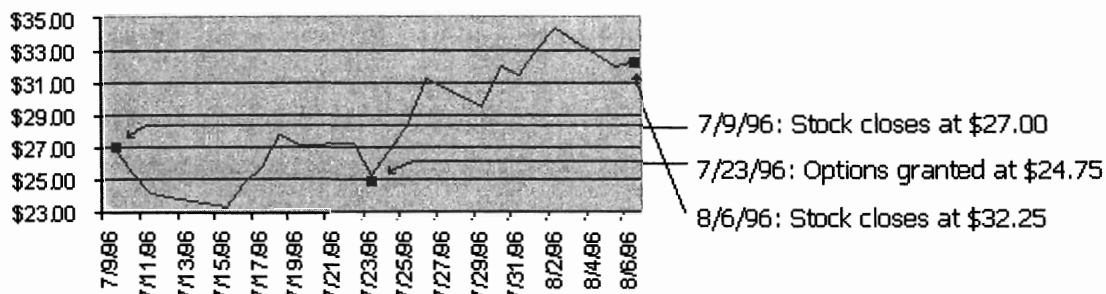
a. Summary of Option Grants and Surrounding Stock Price Performance

Purported Date of Grant	Exercise Price	Stock Price 10 Trading Days Before Grant	Stock Price 10 Trading Days After Grant	% Rise in Stock Price After Grant
7/25/95	\$34.125	\$33.625	\$38.70	13.4%
7/23/96	\$24.75	\$27.00	\$32.25	30.3%
1/12/98	\$51.875	\$53.69	\$62.00	19.5%
4/13/99	\$56.3125	\$53.25	\$56.8125	1%
7/28/00	\$50.25	\$69.875	\$61.6875	22.8%
4/17/01	\$38.25	\$37.4375	\$50.08	30.9%
7/26/02	\$25.05	\$30.07	\$27.46	9.6%

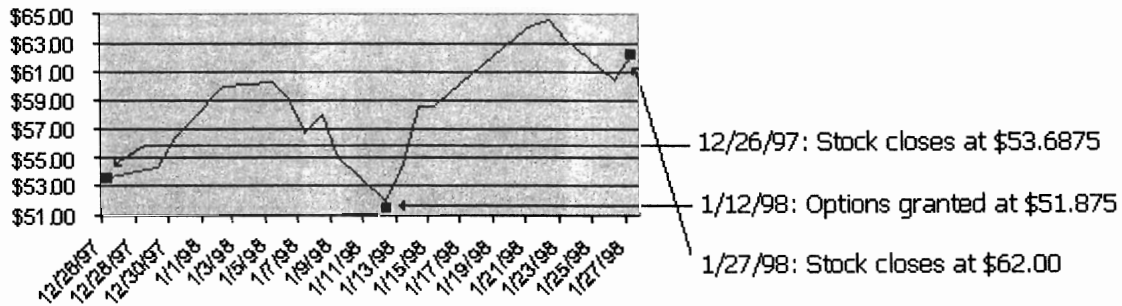
b. Stock Price Performance Surrounding Option Granted Dated 7/25/95



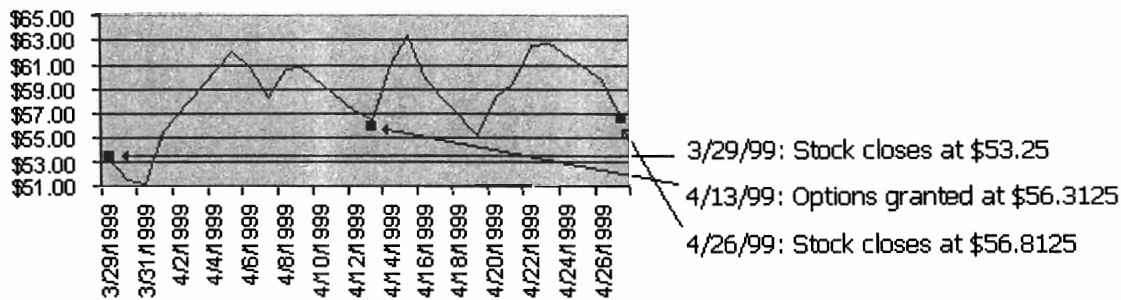
c. Stock Price Performance Surrounding Option Granted Dated 7/23/96



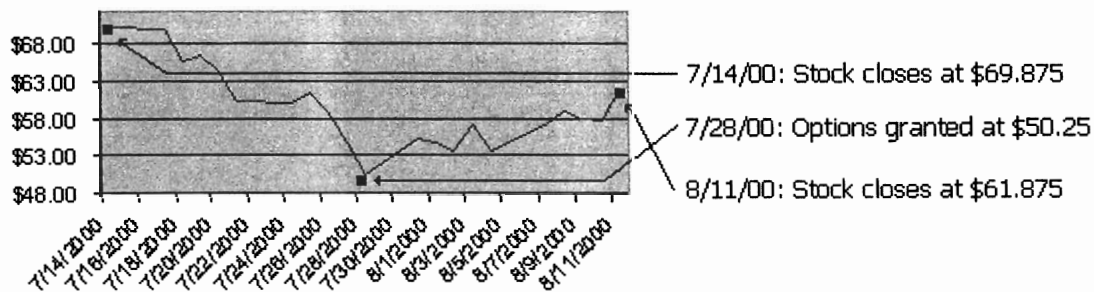
d. Stock Price Performance Surrounding Option Granted Dated 1/12/98



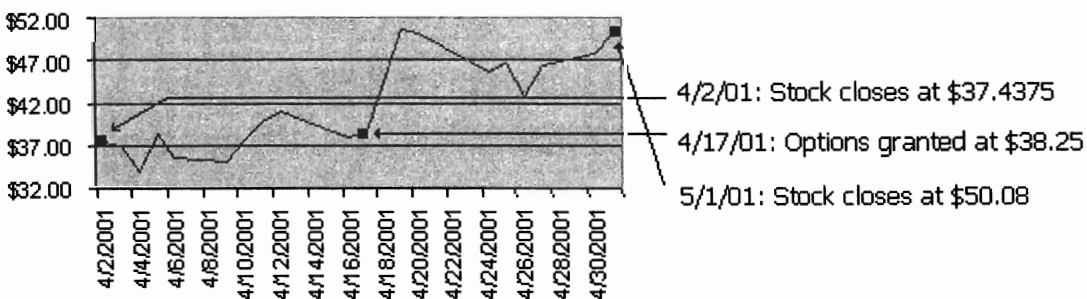
e. Stock Price Performance Surrounding Option Granted Dated 4/13/99



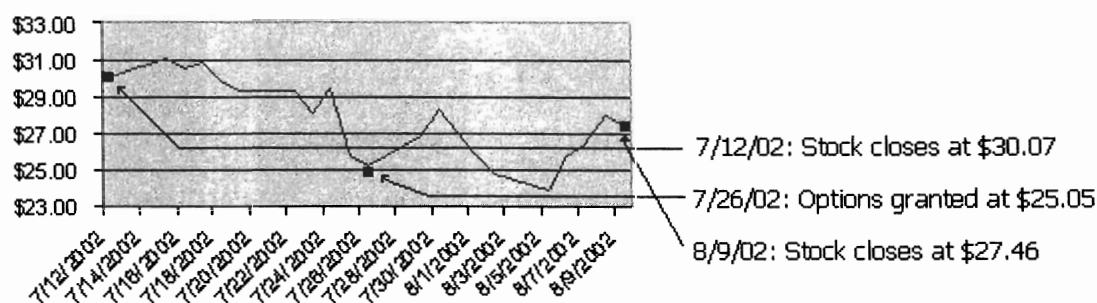
f. Stock Price Performance Surrounding Option Granted Dated 7/28/00



g. Stock Price Performance Surrounding Option Granted Dated 4/17/01



h. Stock Price Performance Surrounding Option Granted Dated 7/26/02



31. The reason for the extraordinary pattern set forth in the preceding paragraph is that the purported grant dates set forth therein were not the actual dates on which the stock option grants were made. Rather, at the behest of the Officer Defendants, the Committee Defendants improperly backdated the stock option grants to make it appear as though the grants were made on dates when the market price of Linear stock was lower than the market price on the actual grant dates. This improper backdating, which violated the terms of the Company's shareholder-approved stock option plans, resulted in option grants with lower exercise prices, which improperly increased the value of the options to the Officer Defendants and improperly reduced the amounts the Officer Defendants had to pay the Company upon exercise of the options.

Dissemination of False Financial Statements

32. As a result of the improper backdating of stock options, the Company, with the knowledge, approval, and participation of each of the Individual Defendants,

- a. violated the terms of the Company's shareholder-approved stock option plans;
- b. violated GAAP by failing to recognize compensation expenses incurred when the improperly backdated options were granted;

- c. violated Section 162(m) by taking tax deductions based on stock option grants that were not payable solely on account of the attainment of one or more performance goals and violated the terms of the Company's shareholder-approved stock option plans; and
- d. produced and disseminated to Linear shareholders and the market false financial statements that improperly recorded and accounted for the backdated option grants.

33. The Company, with the knowledge, approval, and participation of each of the Individual Defendants, disseminated its false financial statements in, *inter alia*, the following Form 10-K filings:

- a. Form 10-K for fiscal year ended June 30, 1996, filed with the SEC on September 27, 1996 and signed by defendants Swanson, Coghlan, Lee, McCarthy, Moley, and Volpe;
- b. Form 10-K for fiscal year ended June 29, 1997, filed with the SEC on September 26, 1997 and signed by defendants Swanson, Coghlan, Lee, McCarthy, Moley, and Volpe;
- c. Form 10-K for fiscal year ended June 28, 1998, filed with the SEC on September 25, 1998 and signed by defendants Swanson, Coghlan, Lee, McCarthy, Moley, and Volpe;
- d. Form 10-K for fiscal year ended June 27, 1999, filed with the SEC on September 24, 1999 and signed by defendants Swanson, Coghlan, Lee, McCarthy, Moley, and Volpe;
- e. Form 10-K for fiscal year ended July 2, 2000, filed with the SEC on September 29, 2000 and signed by defendants Swanson, Coghlan, Lee, McCarthy, Moley, and Volpe;
- f. Form 10-K for fiscal year ended July 1, 2001, filed with the SEC on September 21, 2001 and signed by defendants Swanson, Coghlan, Lee, McCarthy, Moley, and Volpe;
- g. Form 10-K for fiscal year ended June 30, 2002, filed with the SEC on September 18, 2002 and signed by defendants Swanson, Coghlan, Lee, McCarthy, Moley, and Volpe.

1 34. Furthermore, from 1995 to 2005, the Company, with the knowledge, approval, and
2 participation of each of the Individual Defendants, for the purpose and with the effect of concealing the
3 improper option backdating:
4

- 5 a. disseminated to shareholders and filed with the SEC annual proxy
6 statements that falsely reported the dates of stock option grants to the
7 Officer Defendants; and
- 8 b. filed with the SEC Form 4 filings that falsely reported the dates of stock
9 option grants to the Officer Defendants.

10 35. On March 18, 2006, *The Wall Street Journal* published an article under the headline “The
11 Perfect Payday” that described similar stock option backdating practices by other companies, including
12 Affiliated Computer Services, Inc. (“ACS”), Linear Group, Inc. (“Linear”), Comverse Technology, Inc.
13 (“Comverse”), and Vitesse Semiconductor Corporation (“Vitesse”). With regard to ACS and its former
14 Chief Executive Officer Jeffrey Rich, the *Journal* reported:

15 On a summer day in 2002, shares of Affiliated Computer Services Inc. sank to
16 their lowest level in a year. Oddly, that was good news for Chief Executive
17 Jeffrey Rich.

18 His annual grant of stock options was dated that day, entitling him to buy stock at
19 that price for years. Had they been dated a week later, when the stock was 27%
20 higher, they’d have been far less rewarding. It was the same through much of
21 Mr. Rich’s tenure: In a striking pattern, all six of his stock-option grants from
22 1995 to 2002 were dated just before a rise in the stock price, often at the bottom
23 of a steep drop.

24 Just lucky? A Wall Street Journal analysis suggests the odds of this happening by
25 chance are extraordinarily remote -- around one in 300 billion. The odds of
26 winning the multistate Powerball lottery with a \$1 ticket are one in 146 million.

27 Suspecting such patterns aren’t due to chance, the Securities and Exchange
28 Commission is examining whether some options carry favorable grant dates for a
29 different reason: They were backdated.

30 36. The odds that the pattern of fortuitously-timed stock option grants exhibited by Linear is
31 the result of chance are similar to, if not greater than, the one in several billion or more odds described

1 by the *Wall Street Journal*. The actual reason for the extraordinary pattern exhibited by Linear was that
 2 the Officer Defendants' stock options were improperly backdated, as alleged herein.

3
 4
 5 **THE INDIVIDUAL DEFENDANTS' BREACHES OF FIDUCIARY DUTIES**

6 37. The Officer Defendants breached their fiduciary duties by:

- 7 a. colluding with the Committee Defendants to backdate stock option grants;
 8
 9 b. colluding with the Committee Defendants to violate GAAP and Section
 10 162(m);
 11
 12 c. colluding with the Committee Defendants to produce and disseminate to
 13 Linear shareholders and the market false financial statements that
 14 improperly recorded and accounted for the backdated option grants and
 15 concealed the improper backdating of stock options; and
 16
 17 d. colluding with the Committee Defendants to file false proxy statements
 18 and false Form 4 filings in order to conceal the improper backdating of
 19 stock options.

20 38. The Officer Defendants' foregoing misconduct was not, and could not have been, an
 21 exercise of good faith business judgment. Rather, it was intended to, and did, unduly benefit the Officer
 22 Defendants at the expense of the Company.

23 39. The Committee Defendants breached their fiduciary duties by:

- 24 a. colluding with the Officer Defendants to backdate stock option grants;
 25
 26 b. colluding with the Officer Defendants to violate GAAP and Section
 27 162(m);
 28
 29 c. colluding with the Officer Defendants to produce and disseminate to
 Linear shareholders and the market false financial statements that
 improperly recorded and accounted for the backdated option grants and
 concealed the improper backdating of stock options; and
 d. colluding with the Officer Defendants to file false proxy statements and
 false Form 4 filings in order to conceal the improper backdating of stock
 options.

1 40. The Committee Defendants' foregoing misconduct was not, and could not have been, an
2 exercise of good faith business judgment. Rather, it was intended to, and did, unduly benefit the Officer
3 Defendants at the expense of the Company.
4

5 41. As a direct and proximate result of the Individual Defendants' foregoing breaches of
6 fiduciary duties, the Company has sustained millions of dollars in damages, including, but not limited
7 to, the additional compensation expenses and tax liabilities the Company was required to incur and loss
8 of funds paid to the Company upon exercise of options.
9

10 **DERIVATIVE AND DEMAND EXCUSED ALLEGATIONS**
11

12 42. Plaintiff brings this action derivatively in the right and for the benefit of the Company to
13 redress defendants' breaches of fiduciary duties and unjust enrichment.

14 43. Plaintiff is an owner of Linear common stock and was an owner of Linear common stock
15 at all times relevant hereto.
16

17 44. Plaintiff will adequately and fairly represent the interests of the Company and its
18 shareholders in enforcing and prosecuting its rights.

19 45. As a result of the facts set forth herein, plaintiff has not made any demand on the Linear
20 Board of Directors to institute this action against the Individual Defendants. Such demand would be a
21 futile and useless act because the Board is incapable of making an independent and disinterested
22 decision to institute and vigorously prosecute this action.
23

24 46. The Board currently consists of six directors: defendants Swanson, Maier, Lee,
25 McCarthy, Moley, and Volpe. The following directors are incapable of independently and
26 disinterestedly considering a demand to commence and vigorously prosecute this action:
27
28
29

- a. Swanson and Maier, because they are directly interested in the improperly backdated stock option grants complained of herein;
- b. Lee, McCarthy, Moley, and Volpe, because as members of the Compensation Committee and the Audit Committee, they directly participated in and approved the misconduct alleged herein and are substantially likely to be held liable for breaching their fiduciary duties, as alleged herein. Moreover, by colluding with the Officer Defendants, as alleged herein, Lee, McCarthy, Moley, and Volpe have demonstrated that they are unable or unwilling to act independently of the Officer Defendants.

47. Furthermore, demand is excused because the misconduct complained of herein was not, and could not have been, an exercise of good faith business judgment.

COUNT I

AGAINST THE INDIVIDUAL DEFENDANTS FOR BREACH OF FIDUCIARY DUTY

48. Plaintiff incorporates by reference all preceding and subsequent paragraphs as if set forth fully herein.

49. As alleged in detail herein, each of the Individual Defendants had a fiduciary duty to refrain from unduly benefiting themselves and other Company insiders at the expense of the Company.

50. As alleged in detail herein, the Officer Defendants breached their fiduciary duties by:

- a. colluding with the Committee Defendants to backdate stock option grants;
- b. colluding with the Committee Defendants to violate GAAP and Section 162(m);
- c. colluding with the Committee Defendants to produce and disseminate to Linear shareholders and the market false financial statements that improperly recorded and accounted for the backdated option grants and concealed the improper backdating of stock options; and
- d. colluding with the Committee Defendants to file false proxy statements and false Form 4 filings in order to conceal the improper backdating of stock options.

51. The Officer Defendants' foregoing misconduct was not, and could not have been, an exercise of good faith business judgment. Rather, it was intended to, and did, unduly benefit the Officer Defendants at the expense of the Company.

52. The Committee Defendants breached their fiduciary duties by:

- a. colluding with the Officer Defendants to backdate stock option grants;
- b. colluding with the Officer Defendants to violate GAAP and Section 162(m);
- c. colluding with the Officer Defendants to produce and disseminate to Linear shareholders and the market false financial statements that improperly recorded and accounted for the backdated option grants and concealed the improper backdating of stock options; and
- d. colluding with the Officer Defendants to file false proxy statements and false Form 4 filings in order to conceal the improper backdating of stock options.

53. The Committee Defendants' foregoing misconduct was not, and could not have been, an exercise of good faith business judgment. Rather, it was intended to, and did, unduly benefit the Officer Defendants at the expense of the Company.

54. As a direct and proximate result of the Individual Defendants' foregoing breaches of fiduciary duties, the Company has sustained millions of dollars in damages, including, but not limited to, the additional compensation expenses and tax liabilities the Company was required to incur and loss of funds paid to the Company upon exercise of options.

COUNT II

AGAINST THE INDIVIDUAL DEFENDANTS FOR VIOLATION OF SECTION 10(b) OF THE SECURITIES EXCHANGE ACT AND RULE 10b-5 PROMULGATED THEREUNDER

55. Plaintiff incorporates by reference all preceding and subsequent paragraphs as if set forth fully herein.

58. As a direct and proximate result of the Individual Defendants' fraud the Company has sustained millions of dollars in damages, including, but not limited to, the additional compensation expenses and tax liabilities the Company was required to incur and loss of funds paid to the Company upon exercise of options.

**AGAINST THE OFFICER DEFENDANTS
FOR UNJUST ENRICHMENT**

60. The Officer Defendants were unjustly enriched by their receipt and retention of backdated stock option grants, as alleged herein, and it would be unconscionable to allow them to retain the benefits thereof.

61. To remedy the Officer Defendants' unjust enrichment, the Court should order them to disgorge to the Company all of the backdated stock options they received, including the proceeds of any such options that have been exercised, sold, pledged, or otherwise monetized.

A. Against all of the Individual Defendants and in favor of the Company for the amount of damages sustained by the Company as a result of the Individual Defendants' breaches of fiduciary duties and statutory violations;

- 1
- 2 B. Ordering the Officer Defendants to disgorge to the Company all of the
- 3 backdated stock options they received, including the proceeds of any such
- 4 options that have been exercised, sold, pledged, or otherwise monetized;
- 5 C. Granting appropriate equitable relief to remedy Defendants' breaches of
- 6 fiduciary duties;
- 7 D. Awarding to plaintiff the costs and disbursements of the action, including
- 8 reasonable attorneys' fees, accountants' and experts' fees, costs, and
- 9 expenses; and
- 10 E. Granting such other and further relief as the Court deems just and proper.

11 **JURY TRIAL DEMANDED**

12 Plaintiff demands a trial by jury.

13

14 Dated: 5/18/06

15 Respectfully submitted,

16 BORNSTEIN & BORNSTEIN

17

18 
Jonathan Herschel Bornstein (SBN 163392)

19 Kathryn Querel (SBN 167100)

20 2590 Geary Boulevard

21 San Francisco, CA 94115-3318

22 Telephone: (415) 409-7611

23 Facsimile: (415) 409-9345

24 DANZIGER SHAPIRO & LEAVITT, PC

25 Douglas M. Leavitt

26 150 S. Independence Mall West, Suite 1050

27 Sixth and Chestnut Streets

28 Philadelphia, PA 19106

29 Telephone: (215) 545-4830

Facsimile: (215) 545-6710

Attorneys for Plaintiff

VERIFICATION

I, David Eisenberg, hereby verify that I have reviewed the Complaint and authorized its filing and that the foregoing is true and correct to the best of my knowledge, information and belief.

DATE: 5/2/06


DAVID EISENBERG